IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1961

No. _____

THOMAS EISTRAT,

Petitioner,

vs.

NORTHERN LUMBER COMPANY, a partnership composed of Charles V. Clawson and Don Clawson, CHARLES V. CLAWSON, DON CLAWSON,

Defendants and Respondents.

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# RESPONDENTS' BRIEF OPPOSING ISSUANCE OF A WRIT OF CERTIORARI

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# ANSWER TO PETITION FOR WRIT OF CERTORARI

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TO THE HONORABLE CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

Your respondents respectfully oppose issuance of a Writ of Certorari in the above entitled matter, and ask that the Petition

herein be dismissed, for the following reasons:

## PRELIMINARY STATEMENT

Before presenting the argument in opposition to a Writ herein, certain misleading statements or distortion of fact set forth in Petitioner's 'Statement of the Case and Facts' must be corrected.

The statement that "The trial court herein also found that defendants refused to deliver said lumber to plaintiff or to pay him, although he demanded such before commencement of this action" (Page 4 of the Petition herein) referred to a Finding of the trial court that defendants refused to surrender certain lumber or pay Petitioner $40,000.00 as demanded in his original complaint. The actual findings of fact and conclusions of law of the trial court, after trial, held that Petitioner herein was not the owner of said lumber and that he had received payment therefor (Clk. Tr. p. 50, lines 11-15; p. 46, lines 15-19).

The opinion of the District Court of Appeal confirmed the findings, conclusions and judgment of the trial court in respect to the title and payment for said lumber as follows:

> "The record demonstrates that the plaintiff was paid by Jones for the lumber the price agreed

> upon between them in their contract. Having accepted the full payment under the circumstances, he cannot now collect again from the defendants."
> 190 A. C. A. 326, 333; Appendix B, Page 333 of the Petition herein.

On page 5 of the Petition herein Petitioner refers to a 'final federal judgment of October 1, 1951' and as authority for his contention that the trial court held said Order to be in favor of defendants (the Respondents herein) he sets forth certain language of the District Court of Appeal appearing in its opinion (190 A. C. A. 326, 329; Appendix B, Page 329 of the Petition herein). Respondents respectfully urge that petitioner has misconstrued both the nature and the effect of said statement, "Judgment in this case was for the defendants" contained therein (190 A. C. A. 326, 329; Appendix B, Page 329 of the Petition herein). This statement is merely a declaration by the reviewing Court of the judgment rendered by the trial court following its resume of the facts in the case to be reviewed, and immediately preceding its decision. Such statement refers to the judgment rendered in the case of Eistrat v. Northern Lumber Company and not the Federal Court Order made on or about October 1, 1951. Were this not so said statement would have referred to 'respondents' or 'The Bankrupt', rather than 'defendants', since there were no persons denominated as 'defendants' in the bankruptcy proceedings.

## STATEMENT OF FACTS

On August 2, 1948, petitioner entered into a Timber Sale Agreement with one Jones, which provided among other things: "Purchaser agrees that no title or ownership of any timber shall pass from Seller until after the timber is cut" (Clk. Tr. p. 21, lines 18 and 19). Between August 2 and October 10, 1948, Jones cut timber under said agreement from which about 161,000 board feet of lumber was milled (Clk. Tr. p. 45, lines 26-31). On June 24, 1949, Jones filed a Petition in Bankruptcy under Chapter XI. Respondents purchased said 161,000 board feet of lumber from Jones during July and August, 1949, at which time they paid Jones for the same, and Jones in turn paid petitioner for the same (Clk. Tr. p. 45, line 26 - p. 46, line 19). Petitioner attempted to cancel this Timber Sales Agreement with Jones, prior to said bankruptcy, but by reason of his suit and attachment following such attempted cancellation the same was ineffective and said agreement was at all times operative (190 A. C. A. 326, 330; Appendix B, Page 330, of the Petition herein). In August of 1949 a Claim was filed by petitioner's wife, acting on their joint behalf, in the Jones bankruptcy, based on the Timber Sales Agreement, which was later withdrawn. On September 29, 1949, petitioner petitioned in the Jones bankruptcy to reclaim his property his prayer therein asking for the land and "timber and lumber and logs located thereon" (Clk. Tr. p. 48, lines 11-13) and an Order was made by the court that petitioner have a return of his land and "the logs, timber and lumber thereon" (Clk. Tr. p. 116, lines 22-29).

## REASONS FOR DENYING THE WRIT

### I

### THIS HONORABLE COURT IS WITHOUT JURISDICTION

The pleadings in the State Court make no reference to any Federal question (Plaintiff's Complaint; Clk. Tr. pp. 1-3; Defendants' First Amended Answer; Clk. Tr. pp. 4-22).

The Findings of Fact and Conclusions of Law (Clk. Tr. pp. 43-50) and Judgment (Clk. Tr. pp. 51 and 52) make no reference to, nor decide, any Federal question.

It therefore appears that (1) no decision of any Federal question was necessary to the determination of the cause (2) no Federal question was decided and, (3) the judgment as rendered required no decision relative to any Federal question. The decisions are numerous that the necessary requisite for a review of a State Court decision is based on one or more of the foregoing.

Adams v. Russell, 229 U. S. 353, 33 S. Ct. 846, 57 L. Ed. 1224

Palmer v. State of Ohio, 248 U. S. 32, 39 S. Ct. 16, 63 L. Ed. 108

Chicago v. Maucher, 248 U. S. 359, 39 S. Ct. 108, 63 L. Ed. 294

Scott v. Platt, 137 P. 2d 975, 171 Ore. 379

No jurisdiction for review lies unless a decision by the State Court of a Federal question is necessary to determination of the cause.

Copperweld Steel Co. v. Industrial Comm. of Ohio, 65 S. Ct. 1006, 324 U. S. 780, 89 L. Ed. 1363

Gordon v. Scudder, 163 F. 2d 518, 68 S. Ct. 208, 332 U. S. 830, 92 L. Ed. 404

To confer jurisdiction for review either a Federal question must have been decided or the judgment could not have been given without deciding it.

Rooker v. Fidelity, 43 S. Ct. 388, 261 U. S. 114, 67 L. Ed. 556

Matthews v. Huwe, 46 S. Ct. 108, 269 U. S. 262, 70 L. Ed. 266

## II

## IT WAS UNNECESSARY TO DECIDE ANY FEDERAL QUESTION TO RENDER A JUDGMENT FOR RESPONDENTS HEREIN.

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What petitioner is attempting to do in these proceedings is to recover a monetary judgment for lumber sold to respondents by Jones who at the time was operating under Chapter XI of the Bankruptcy Act. This lumber belonged to Jones before the bankruptcy proceedings were instituted on June 24th, 1949 (Clk. Tr. p. 45, lines 10-12), the timber from which said lumber was made having been cut prior to October 10th, 1948 (Clk. Tr p. 45, lines 26-31); therefore, the lumber never did belong to petitioner.

Furthermore, petitioner accepted payment for the lumber for which he is again seeking payment in these proceedings (Clk. Tr. p. 46, lines 14-19) (190 A. C. A. 326, 333; Appendix B, Page 333 of the Petition herein).

The above facts were adduced from the evidence before the court and construed according to the laws of the State of California, and under those facts respondents were entitled to judgment, aside from any Federal question, it being well established that this Honorable Court will not ordinarily review evidence and discuss specific facts unless an important Federal question is involved.

General Talking Pictures Corp. v. Western Electric, 58 S. Ct. 849, 304 U. S. 175, 82 L. Ed. 1273

Southern Power Co. v. North Carolina, 263 U. S. 508, 68 L. Ed. 413

Land v. Dollar, 330 U. S. 731, 91 L. Ed. 1209

Silvert v. Pennsylvania R. Co., 197 F. 2d 371

III

THE STATE COURT NEITHER REPUDIATED NOR NULLIFIED A FEDERAL COURT JUDGMENT, BUT IN FACT GAVE EFFECT TO THE SAME.

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That portion of the Order of the Federal Court with which we are concerned and as referred to by petitioner is as follows:

> "III That the Trustee herein forthwith deliver over to said THOMAS EISTRAT and ELMA EISTRAT possession of said real property and the logs, lumber and timber thereon." (ClkTr. p. 48, lines 23-27 and p. 116, lines 26-29).

Said Order was based on a Petition filed by petitioner which only asked for the return of his real property, "together with the timber and lumber and logs located thereon" (Clk. Tr. p. 48, lines 11-13). Therefore, the only matter before the Federal Court was to determine if petitioner was entitled to a return of his real and personal property located on his property at the time the petition was filed; and, the Order of the Federal Court above cited gave petitioner exactly what he petitioned for, and no more. The lumber purchased by respondents was sold and delivered during July and August of 1949 (Clk. Tr. p. 46, lines 4-8), while petitioners' Petition to Reclaim upon which the foregoing Federal Court Order was based was not filed until September 29, 1949 (Clk. Tr. p. 46, lines 21-23). Therefore, the conclusion of the trial court that both the Petition to Reclaim and the Federal Court Order based thereon referred to the property in the hands of the Receiver and Trustee was the only possible conclusion under the language of the Petition and Order and facts in the case (Clk. Tr. p. 50, lines 23-30).

## CONCLUSION

Respondents respectfully submit that petitioner herein is attempting to recover damages for property for which he already accepted payment. That no Federal question has ever been raised, none is presented herein, none was decided and it is unnecessary to decide any Federal question to a final determination of this case. That the case was decided

on the basis of facts and evidence presented and construed under the laws of the State of California. That the petitioner herein should be dismissed and costs awarded to respondents.

Respectfully submitted,

VINCENT SCOTT

Attorney for Respondents.